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OFFICE OF PETITIONS

In re Application of :
Magnus Gannholm : DECISION ON PETITION
Application No. 09/888,384 :
Filed: 26 June, 2001 :
Atty Docket No. 06000-115 :

This is in reply to Petitioner's "Petition Under 37 CFR 1.182," filed on 27 January, 2005, which is treated as a petition under 37 CFR 1.181 requesting that the application be treated as if it had not been filed with a "Nonpublication Request" on filing. This is being treated as a request to rescind the "Nonpublication Request" in the Office's electronic records.

The petition is Granted.

Petitioner requests that the application be published and argues that the application should be treated as if a "Nonpublication Request" was never filed, since a "Nonpublication Request" form was not included with the application on filing. Petitioner argues that the box on the Transmittal letter signed by Petitioner's representative for "Nonpublication Request Under 35 U.S.C. 122(b)(2)(B)(i)," was not checked and that therefore nonpublication was never requested.

On 26 June, 2001, the above-identified application with a Transmittal letter by Petitioner's representative was filed in the United States Patent and Trademark Office (Office). The box for "Nonpublication Request Under 35 U.S.C. 122(b)(2)(B)(i)" was not checked on the transmittal letter signed by Petitioner's representative. The above-identified application would have been eligible for publication on 26 December, 2002.

On 17 August, 2001, a Filing Receipt was mailed by the Office acknowledging a "Nonpublication Request".

On 9 November, 2001, a second Filing Receipt was mailed, also indicating the filing of a "Nonpublication Request".

On 27 January, 2005, over three (3) years after the Filing Receipt acknowledging the nonpublication request would have been received by applicant and after the application should have been published, Petitioner filed the instant petition requesting that the application be treated as if a "Nonpublication Request" had not been made on filing.

35 U.S.C. 122(b) requires the United States Patent and Trademark Office to publish utility and plant applications filed on or after November 29, 2000, unless, on filing, applicant requested nonpublication with the required certification. The statute also provides that if an applicant who has submitted a nonpublication request subsequently files an application directed to the invention disclosed in the application in which the nonpublication request was submitted in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant must notify the Office of such filing within forty-five days after the date of the filing of the foreign or international application. The failure to notify the Office of the filing of such foreign or international application shall result in abandonment of the application in which the nonpublication request was submitted.

Since a proper Nonpublication Request under 35 U.S.C. 122(b) was not received on filing, as the required statutory language was not included, the application will be treated as if the Nonpublication Request had not been made.

Petitioner's counsel states that the "nonpublication request" on the filing receipt mailed on 17 August, 2001 "was not noticed by Applicant." Petitioner does not address the Filing Receipt mailed on 9 November, 2001, however, the Office is construing the petition to mean that petitioner also failed to notice on the second Filing Receipt that nonpublication had been requested.

In the future, Applicant's representatives should carefully review filing receipts and timely advise the Office of any errors. A delay in publication, as caused by the delay in notifying the Office of the erroneous reference to a nonpublication request, could cause applicants to lose provisional rights under 35 U.S.C. 154(d).

The application will be published in due course.

Telephone inquiries regarding this communication should be directed to the undersigned at (571)272-3231.

A handwritten signature in dark ink, appearing to read "D. Wood". The signature is stylized with a large, looped initial "D" and a cursive "Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions